The Rat Race as an Information-Forcing Device†

SCOTT BAKER,* STEPHEN J. CHOI,** AND MITU GULATI***

In many job settings, there will be some promotion criteria that are less amenable to measurement than others. Often, what is difficult to measure is more important. For example, possessing "good judgment" under pressure may be a better predictor of success as a law firm partner than the ability to bill a vast amount of hours. The first puzzle that this essay explores is why, in some promotion settings, organizations appear to focus on less important, but measurable, criteria such as hours billed. The answer lies in the relationship between the objectively measurable criteria, on the one hand, and the subjective and less visible (but more important) attributes on the other hand. Under certain circumstances, a competition over the measurable criteria, such as hours billed or number of deals accomplished, can force the revelation of information on hard-to-measure subjective attributes of the candidate such as judgment or collegiality. For example, it is easier to evaluate the judgment of an associate who has amassed a number of deals than one who has not. Some information about the associate's good and bad judgment is likely to be generated from the deals. So, while it makes little sense to promote associates based solely on billable hours, making billable hours the goal of the first round of a tournament, where the winners are awarded eligibility for consideration for partnership, can generate information more relevant to the second-round partner selection decision.

Explaining the first puzzle leads to a second puzzle. If promotion tournaments over measurable criteria can be effectively utilized in the private sector to force information about candidate traits, why do we not see revelation tournaments elsewhere, where competition may generate information useful in evaluating candidates for promotion? The answer, we suggest, has to do at least in part with agency problems. Promotion tournaments based on measurable criteria limit the discretion of agents making the promotion decisions. When decision makers have less discretion, the return to currying favor with those decision makers falls. As a result, decision makers with less discretion earn less "rent." Decision makers acting as agents also enjoy a reduced ability to make promotion decisions according to their own preferences separate from the goals of their principals.

---

* Associate Professor of Law, University of North Carolina at Chapel Hill.

** William T. Comfort, III Professor of Law, New York University Law School.

*** Professor of Law, Georgetown Law Center.

Thanks for discussions to Iman Anabtawi, Suzette Baker, Caroline Gentile, Oren Bar-Gill, Devon Carbado, John Conley, Adrienne Davis, Adam Feibelman, Kevin Haynes, Kim Krawiec, William Marshall, Claudio Mezzetti, Un Kyung Park, Shawn Pompian, Eric Posner, Richard Posner, and Kathryn Zeiler. Workshop participants at Northwestern, North Carolina State's economics department, and the Indiana University conference on law school rankings provided feedback. At the Indiana University conference, our commentators, Michael Solimine and Rafael Gely, gave thoughtful insights. Finally, we owe a debt to Jim Rebitzer, Michael Seidman, and Emerson Tiller who, in different contexts, raised questions that got us started in thinking about the relationship between objective and subjective criteria.

INTRODUCTION: THE VALUE OF COMPETITION IN INTERNAL JOB MARKETS

Since the days of Adam Smith, economists have extolled the virtues of competition. Competition drives down prices, forces inefficient firms from the market, and leads to the production of a diverse array of goods and services. It is unsurprising that economists eventually looked to competition in studying the design of wage compensation and promotion schemes. One result—tournament theory—uses the idea that employers employ rank-order contests to provide lower level workers with incentives.[1] In its simple form, tournament theory considers two workers and a single prize, usually a large salary or a promotion. At the end of the contest, the employer ranks the two workers based on easily observable criteria and bestows the prize on only one of them. In competing for the prize, both workers expend effort and avoid shirking. In other words, promotions are not solely about promoting the best person for the job. The promotion "prize"—and the competition it creates—is intended to induce employees to work harder in their current positions.[2]

Legal scholars have applied tournament theory to a wide range of topics. The theory dominates the scholarship about the internal workings of law firms.[3] The theory also

---

1. *See* Jerry R. Green & Nancy L. Stokey, *A Comparison of Tournaments and Contracts*, 91 J. POL. ECON. 349 (1983); Edward P. Lazear & Sherwin Rosen, *Rank-Order Tournaments as Optimum Labor Contracts*, 89 J. POL. ECON. 841 (1981); James M. Malcolmson, *Work Incentives, Hierarchy, and Internal Labor Markets*, 92 J. POL. ECON. 486 (1984); Barry J. Nalebuff & Joseph E. Stiglitz, *Prizes and Incentives: Towards a General Theory of Compensation and Competition*, 14 BELL J. ECON. 21 (1983).

2. In addition, by comparing two workers, the employer can determine whether a positive outcome (e.g., high sales) is the result of a worker's additional effort or good fortune. For example, if both workers have high sales, an employer might infer that the market was hot; hence, the high sales did not result from extra effort by either worker. In contrast, if only one worker has high sales, a logical inference is that worker exerted extra effort. In other words, comparison of the two workers enables the employer to uncover the true source of high sales. As a result, the employer can more effectively tie salary increases to effort levels. *See* Margaret A. Meyer & John Vickers, *Performance Comparisons and Dynamic Incentives*, 105 J. POL. ECON. 547, 548 (1997); Nalebuff & Stiglitz, *supra* note 1, at 22. The upshot is that relative rankings are useful when common external shocks—such as a hot market—influence each worker's performance on the measured criteria. Hence, where external shocks are possible—such as law firm billable hours—our discussion centers on "tournaments" (that is, relative rankings) rather than objective screens or hurdles. In contexts where external shocks to productivity are unlikely (for example, academic tenure in law schools), we focus on minimum quantity standards, rather than relative performance. The information-forcing results hold even if decision makers use objective screens instead of tournaments.

3. *See, e.g.*, MARC GALANTER & THOMAS PALAY, TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM (1991); Stephen M. Bainbridge, *The Tournament at the Intersection of Business and Legal Ethics*, 1 ST. THOMAS L. REV. 909 (2004); Leonard M. Baynes, *Falling Through the Cracks: Race and Corporate Law Firms*, 77 ST. JOHN'S L. REV. 785 (2003); Charlotte Chiu & Kevin T. Leicht, *When Does Feminization Increase Equality: The Case of Lawyers*, 33 LAW & SOC'Y REV. 557 (1999); Marc S. Galanter & Thomas M. Palay, *Large Law Firm Misery: It's the Tournament, Not the Money*, 52 VAND. L. REV. 953 (1999); Bruce M. Price, *How Green Was My Valley? An Examination of Tournament Theory as a Governance Mechanism in Silicon Valley Firms*, 37 LAW & SOC'Y REV. 731 (2003); Milton C. Regan, Jr., *Law Firms, Competition Penalties, and the Values of Professionalism*, 13 GEO. J.

figures into discussions about other internal labor markets, including inquiries into why and when corporate actors misbehave, why U.S. executives are paid the amounts that they are, and how judges should be promoted.[4] Often (although not always), subjective, less measurable criteria are just as indicative of future success as the objective and measurable criteria use in promotions, including billable hours in the context of law firms and profits earned in the corporate context. Although billable hours are important, an associate's judgment and ethical behavior are arguably at least as important predictors of success as a law firm partner.[5] The ideal promotion decision may depend on both an assessment of objective and subjective criteria.

LEGAL ETHICS 1 (1999); Larry E. Ribstein, *Ethical Rules, Agency Costs, and Law Firm Structure*, 84 VA. L. REV. 1707, 1719 (1998); George Rutherglen & Kevin A. Kordana, *A Farewell to Tournaments? The Need for an Alternative Explanation of Law Firm Structure and Growth*, 84 VA. L. REV. 1695 (1998); Susan S. Samuelson & Lynn J. Jaffe, *A Statistical Analysis of Law Firm Profitability*, 70 B.U. L. REV. 185 (1990); Randall S. Thomas et al., *Megafirms*, 80 N.C. L. REV. 115 (2001); David B. Wilkins, *Doing Well By Doing Good? The Role of Public Service in the Careers of Black Corporate Lawyers*, 41 HOUS. L. REV. 1 (2004); David B. Wilkins, *From "Separate is Inherently Unequal" to "Diversity is Good For Business": The Rise of Market-Based Diversity Arguments and the Fate of the Corporate Black Bar*, 117 HARV. L. REV. 1548 (2004); David B. Wilkins & G. Mitu Gulati, *Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms*, 84 VA. L. REV. 1581 (1998).

4. *See, e.g.*, Iman Anabtawi, *Explaining Pay Without Performance: The Tournament Alternative*, 54 EMORY L. J. (forthcoming 2005); William W. Bratton, *Enron and the Dark Side of Shareholder Value*, 76 TUL. L. REV. 1275 (2002); Stephen Choi & Mitu Gulati, *A Tournament of Judges?*, 92 CAL. L. REV. 299 (2004); Jill E. Fisch, *Lawyers on the Auction Block: Evaluating the Selection of Class Counsel by Auction*, 102 COLUM. L. REV. 650, 662 (2002); Eric Kades, *Windfalls*, 108 YALE L.J. 1489, 1552–53 (1999); Kimberly D. Krawiec, *Accounting for Greed: Unraveling the Rogue Trader Mystery*, 79 OR. L. REV. 301, 311–13 (2000); Donald C. Langevoort, *The Human Nature of Corporate Boards: Law, Norms, and the Unintended Consequences of Independence and Accountability*, 89 GEO. L.J. 797, 808 (2001); Martin J. McMahon, Jr. & Alice G. Abreu, *Winner-Take-All Markets: Easing the Case for Progressive Taxation*, 4 FLA. TAX REV. 1 (1998); Marleen A. O'Connor, *The Enron Board: The Perils of Groupthink*, 71 U. CIN. L. REV. 1233, 1252–55 (2003); Susan J. Stabile, *My Executive Makes More Than Your Executive: Rationalizing Executive Pay in a Global Economy*, 14 N.Y. INT'L L. REV. 63, 67 (2001).

5. For purposes of this essay, we assume that (1) the objectively measurable criteria at issue are less important than the subjective criteria, and (2) the subjective criteria cannot be measured. Strictly speaking, this is incorrect. Even the apparently fuzzy factors such as collegiality and fairness can be "objectified" and measured through personality tests. And, assuming that these measurements are taken with good instruments, there is empirical scholarship that demonstrates the superiority of these "objectified" measures over subjective, impressionistic, and "gut-feeling" judgments about the same attribute. Implicit in those studies, however, is the assumption that most, if not all, of the criteria that need to be factored into the prediction models can be measured by both objective *and* subjective methods. If so, then the regressions and other more scientific models seem to do a better job in making predictions of future behavior than do personal subjective estimations of the trait at issue (for example, judgment). However, we are examining somewhat different contexts. We are assuming that it is not possible (or, more precisely, not acceptable) to subject the participants in these settings to such measures as personality tests of the type that would then yield objective scores. For discussions of the research cited above, see William M. Grove & Paul E. Meehl, *Comparative Efficiency of Informal (Subjective, Impressionistic) and Formal (Mechanical, Algorithmic)*

In the areas of interest to legal scholars, standard tournament theory is incomplete. Key promotion criteria seem unrelated to criteria that most observers would agree are important for higher-level jobs. As noted, law firm associates obsess about and compete over billable hours. Yet, without exception, partners we spoke to (informally) asserted that, in predicting an associate's success as a partner, the ability to bill a large number of hours is less important than the ability to exercise judgment.

So, why the focus on billable hours? Competition over objective criteria can sometimes lead to the revelation of information useful in the promotion process. By inducing a heightened level of competition among promotion candidates, a tournament can force the candidates to reveal otherwise difficult-to-observe information, including more subjective attributes such as judgment, fairness, collegiality, and integrity.[6] We assume that participants in the tournament are unable to convey credibly this difficult-to-observe information (if known to the participants) to the decision makers. Few would voluntarily reveal that they lack collegiality or integrity. Moreover, because it is difficult to place an objective metric on these subjective attributes, running a tournament based directly on them would not be feasible. After all, how would an organization structure a tournament based directly on which person has the most integrity? Participants may reveal some types of information, such as integrity, only when under the stress of competition over some other goal.

Take, as an example, a tennis match. One player wins, but that is not the only piece of information that the players learn about each other as a result of the game. The game allows each player to observe how the other exercises judgment as to other matters such as close line calls. If one player consistently makes all the close calls in his favor, that provides an observer with information with which to make an inference about the personality of that player. The inference drawn might be that this person is highly competitive and unethical. If that same player also frequently challenges his opponent's calls and periodically throws tantrums, these actions will provide information with which to make additional inferences. This new information might help confirm a prior inference about the player's competitiveness and allow for the additional inference that

---

Prediction Procedures: The Clinical-Statistical Controversy, 2 PSYCHOL. PUB. POL'Y & L. 293 (1996) (reporting on the dominance of formal prediction procedures over informal ones); John Monahan, *The Scientific Status of Research on Clinical and Actuarial Predictions of Violence*, in MODERN SCIENTIFIC EVIDENCE: THE LAW AND SCIENCE OF EXPERT TESTIMONY 423 (David L. Faigman et al. eds., 2d ed. 2002) (similar); Russell Smyth, *Do Judges Behave as Homo Economicus and, if so, Can We Measure Their Performance? An Antipodean Perspective on a Tournament of Judges*, 32 FLA. ST. U. L. REV. (forthcoming 2005) (pointing to the large literature that suggests that criteria such as collegiality and integrity can be measured using relatively objective methods).

6. This framework resembles the dynamic principal-agent models seen in the economic literature. *See, e.g.*, Jean-Jacques Laffont & Jean Tirole, *The Dynamics of Incentive Contracts*, 56 ECONOMETRICA 1153 (1988); Meyer & Vickers, *supra* note 2. From the labor economists, Bentley MacLeod and James Malcomson's work comes closest to the discussion here. *See* W. Bentley MacLeod & James M. Malcomson, *Reputation and Hierarchy in Dynamic Models of Employment*, 96 J. POL. ECON. 832 (1988). In their model, the employer uses a tournament to promote workers through a job pyramid. Through the competition over increasingly limited slots in the pyramid, the employer learns about the private attributes of each worker. Our paper extends and builds on MacLeod and Malcomson's model by considering (1) the precise link between objective and subjective standards, and (2) why tournaments are used sometimes and not others.

this person is emotionally childish. The nature of these inferences will change as a function of context: how close the match was, what the stakes were, and the history of the two players' relationship. The point is that the competitive process provides information not only about who the winner is, but also about the kinds of strategic choices or judgment calls made by each player in the course of competing.

Therefore, an employer seeking to choose among a set of potential employees—for example, summer associates at a law firm—may find it useful to set up a tennis tournament at the firm's annual retreat to observe how these prospective employees behave. The employer cares little about who wins, but obtains information by setting up the competition and observing the choices competitors make.[7]

The information-forcing nature of the competitive process provides insights into the way employers structure internal labor markets. The need to force information from workers may explain why employers set up what appear to be two-round promotion tournaments. These promotion systems differ from the promotion systems predicted by standard tournament theory. In the first round, easily observable criteria are employed to rank candidates relative to one another, allowing decision makers to cull the number of candidates down to a smaller subset to be considered for promotion. The smaller subset of candidates is then pushed into a "second round," where the organization evaluates hard-to-observe subjective characteristics such as judgment and collegiality.[8]

The information-forcing function of this two-round "revelation" tournament sheds light on a puzzling aspect of the use of tournament theory to explain internal labor markets. Contrary to conventional tournament theory, organizations disclose explicit

---

7. This example is not all that far-fetched. In the late 1990s, a firm told one of the authors (Baker) that the only way to *not* get a permanent offer after being a summer associate was to rush the mound during the annual firm softball game. Rumor has it that one federal circuit court judge used to go around to top law schools holding informal poker tournaments for law review members. Those who did well at the tournaments had the best shot at getting a clerkship with the judge. Presumably, this judge found that students behaved in ways during the poker tournament that revealed information that he could not easily obtain by looking at their resumes, speaking to their references, or interviewing them in his office. *Cf.* David Margolick, *At the Bar: Annual Race for Clerks Becomes a Mad Dash, with Judicial Decorum Left in the Dust*, N.Y. TIMES, Mar. 17, 1989, at B4 (discussing the clerkship hiring process, including the poker interviews used by one judge).

8. Note that the subjective criteria need not positively correlate with the objective criteria for information forcing to work. Therefore, the winner of the first round is not necessarily the winner of the second round. Someone may produce a high-value outcome (for example, a large number of billable hours), and most of the time, this outcome will be a good thing (for example, because it generates a lot of income for the firm). But the associate's desire to bill more hours, including hours where she was so tired that she made mistakes, may reveal bad judgment. And ensuring that its partners have good judgment may be more important to the firm than selecting the associate who is willing to bill 4000 hours per year. An associate who wins the first round by billing the highest number of hours may manage to lose the second round by demonstrating bad judgment in billing hours at times when it was not physically possible for her to have been working at peak capacity. And to the extent some of her projects fell through because of demonstrably bad judgment on account of the high number of hours billed, the firm will conclude that, although she wins the first round, she ultimately loses because she loses the second round.

promotion criteria.[9] For example, in making partnership decisions, law firms employ what is conceptually a revelation tournament that entails some combination of objectively measurable criteria (such as billed hours and successful deals completed) and subjective criteria (such as judgment, leadership, and collegiality).[10] This fuzzy standard enables the law firm to make decisions based on attributes of the candidate that can only be measured subjectively. The first-round competition involving less important objective measures forces information about subjective traits and so facilitates the second-round evaluation.

In settings where the use of objective evidence to make decisions about relative merit is challenged, critics typically deploy two primary arguments: (a) the data does not capture important aspects of the candidate's performance or suitability for the job at issue, and (b) the focus on objective but imperfect measures of performance encourages wasteful strategic behavior in employees because they focus excessively on the measurable (and rewarded) criteria and ignore the other important but less measurable criteria.[11] We have no quarrel with these arguments.

---

9. *See* Wilkins & Gulati, *supra* note 3, at 1620–24 (describing the selection criteria for promotion at law firms). Although there appears to be very little systematic research on the nature of law school promotion processes, most of the commentary that mentions the process suggests that the criteria for promotion are unclear (other than a general notion that one must produce some combination of scholarship, teaching, and service, where scholarship is more important than the other two). *See* Devon W. Carbado & Mitu Gulati, *Tenure*, 53 J. LEGAL EDUC. 157 (2003) (describing the vague nature of the process behind most law school promotion decisions); Henry Gabriel, *Juggling Scholarship and Social Commitment: Service to the Community Through Representation of Indigent Criminal Defendants*, 20 N.C. CENT. L.J. 223, 225 n.5 (noting that the tradeoffs between doing scholarship and pro bono work are generally not made clear to junior faculty); Kenneth Lasson, *Scholarship Amok: Excesses in the Pursuit of Truth and Tenure*, 103 HARV. L. REV. 926, 935–37 (1990) (describing the vague and subjective nature of the scholarship requirements for legal academics); Melissa Marlow-Shafer, *Student Evaluation of Teacher Performance and the "Legal Writing-Pathology:" Diagnosis Confirmed*, 5 N.Y. CITY L. REV. 115, 127 (2002) (noting that 18% of legal writing instructors did not know whether student evaluations affected decisions regarding promotion, tenure, or merit pay increases).

10. *See* Wilkins & Gulati, *supra* note 3, at 1658–65 (describing the partnership promotion process in law firms). Wilkins and Gulati describe the partnership promotion process as a "multiround tournament model that includes multiple incentive systems, tracking, seeding, and information control." *Id.* at 1589. Wilkins and Gulati do not mention the information-generating aspects of a tournament. Instead, they posit that the multi-round nature of the law firm tournament provides incentives for different types of associates (including those with no intention of making partner) to work hard. *See id.* at 1644–51.

> Through tracking [across multiple tournament rounds], firms strengthen the commitments of associates whom they want to stay while simultaneously giving those not receiving training reason to seek rewards other than winning the tournament. Associates who continue to get good work are more likely to be happy and to stay at the firm. Not only are they satisfying their desire to develop human capital, but they are also receiving a tangible signal from the firm that their chances of winning the tournament are better than the many associates who are only receiving paperwork.

Id.

11. *See, e.g.*, *infra* note 44 and accompanying text (citing the Goldberg, Orth, and Marshall

To borrow from the title of Steven Kerr's classic article, it is often indeed "folly [to] reward[] A, while hoping for B."[12] Economists have concluded that the distortional effects described above can explain why many multi-task jobs are characterized by "low-powered" incentive schemes.[13] A low-powered incentive scheme does not reward the worker based on performance; instead, the employer pays a fixed wage. In contrast, a high-powered incentive scheme bases compensation largely on performance on some measured basis. Piece-rate pay is the most commonly used example. Where a job involves multiple tasks and performance is measurable on some tasks but not others, a high-powered incentive scheme causes the worker to concentrate on the measured task. In so doing, the worker might ignore or shirk the nonmeasurable tasks, which may be equally important to the employer. This distortion renders the high-powered incentive scheme potentially undesirable.

Our insight is that high-powered incentive schemes work nonetheless in multi-task environments. The resulting contract, however, is more complicated than commonly modeled. As noted, in a revelation tournament, employers combine performance-based pay with a vague and fuzzy promotion standard. On the measurable output level, the employer rewards the worker: the more hours billed, the greater the associate's salary and his or her chance at a year-end bonus. But, as in the economic models, the performance-based pay induces the worker to obsess about the performance measure and, perhaps, ignore the job's more subjective tasks (e.g., helping others). The employer can then use the worker's performance on the subjective tasks to make the promotion decision. While a mere statement on the part of the worker that she likes to "help others" is not credible, actual observation of the worker assisting her co-workers, even when under the stress of a tournament, provides the employer with credible information on the predilection of the worker on this subjective characteristic.[14] In other words, providing high-powered incentives for task *A* may enable the employer to identify those employees who will be most likely to excel at task *B*. The relative unimportance of the first-round objective criteria may not matter so long as the competition over these criteria reveals hard-to-observe information about the promotion candidates.

Our revelation tournament theory can, as a positive matter, add to the existing explanations for the existence of multi-round tournaments in certain situations, such as

---

critiques of using empirical rankings in the promotion of judges). The standard cite on this point is a 1975 article by Steven Kerr that was later republished as a classic in 1995. *See* Steven Kerr, *An Academy Classic: On the Folly of Rewarding A, While Hoping for B*, 9 ACAD. MGMT. EXECUTIVE 7 (1995) (observing how reward systems are often structured to discourage desired behavior and encourage unproductive actions).

12. Kerr, *supra* note 11.

13. Kerr's insight about the distortional effects of "high-powered" incentive systems has been formalized and built on by economists, some of whom seek to explain why jobs that require multi-tasking often use "low-powered" incentives. *See* George P. Baker, *Incentive Contracts and Performance Measurement*, 100 J. POL. ECON. 598 (1992); Bengt Holmstrom & Paul Milgrom, *Multitask Principal-Agent Analyses: Incentive Contracts, Asset Ownership, and Job Design*, 7 J.L. ECON. & ORG. 24 (1991). In the accounting literature, see Gerald Feltham & Jim Xie, *Performance Measure Congruity and Diversity in Multi-Task Principal/Agent Relations*, 69 ACCT. REV. 429 (1994).

14. For example, in the drive for billable hours, an associate may yell at support people or neglect co-workers. Law firm partners could see or hear about these activities and then make promotion decisions based on the now-uncovered characteristics.

partnership promotions within law firms. We also make a normative argument that revelation tournaments may prove useful in flushing out the hidden motivations of decision makers in other promotion situations, such as judicial nominations. Agency problems may lead decision makers acting as agents (e.g., politicians in the case of judicial nominations) to eschew such tournaments even if increased transparency would benefit the principals (e.g., the voting public). Put differently, the question that the positive portion of our analysis raises is this: if promotion tournaments involving measurable criteria can be effectively used in the private sector to force information about candidates' traits, why do we not see greater use of revelation tournaments in less profit-oriented settings such as the legal academia or the federal judiciary?

In answering this question, we note that a revelation tournament restricts the discretion of agents in decision-making positions. With the tournament in place, decision makers must justify a promotion decision based on the information revealed through the tournament. Decision makers, however, value discretion in making promotion choices. One reason for this is that the more discretion decision makers have, the greater the incentives of the lower-level employees to engage in influence activities—that is, paying rents to and garnering favor with the agents in control—and this potentially benefits the controlling agents to a greater extent than a system in which the promotion criteria are more transparent.[15] Alternatively, decision makers acting as agents may eschew a revelation tournament to allow the decision makers to make decisions more in line with their own personal preferences, even if in conflict with the goals of the principals. The lack of information allows the decision makers to mask their true motives from the principals in selecting a particular candidate for promotion. The failure to use a revelation tournament, therefore, reflects a kind of agency cost. By rejecting the tournament, decision makers maintain discretion and the resulting rents that come with that discretion.

We are not suggesting that a revelation tournament is appropriate in all employment situations. In some cases, easily observable objective criteria may be the best predictors of future success, even for candidates who are seeking promotion to a new position. And even where harder-to-observe subjective criteria provide more information on the probability of success, running a tournament based on objective criteria may provide little information about the subjective criteria. Last, the cost of implementing a revelation tournament may simply outweigh the benefits.

In this Article, we develop a revelation tournament model that we hope will improve current understanding of many promotion systems. The Article consists of two parts.

---

15. Paul Milgrom's insight was that in contexts where changing jobs is costly and the higher-level employees have control and discretion over promotions, lower-level employees have an incentive to engage in wasteful "influence activities." One solution is to put in place promotion criteria that limit the discretion of those agents making promotion decisions. As discretion over promotion decisions is limited, the incentives to engage in the wasteful influence activities are correspondingly reduced. *See* Paul R. Milgrom, *Employment Contracts, Influence Activities, and Efficient Organization Design*, 96 J. POL. ECON. 42 (1988). In his paper, Milgrom initially defines efforts at influence activities as redistributive. That is, because of influence activities, the decision maker takes a job perk from worker *A* and gives it to worker *B*. Under these conditions, it is sometimes optimal for the organization to restrict decision maker discretion and eliminate any gains from competing for influence. Milgrom also shows that a similar result holds when the redistribution assumption is relaxed.

Part I describes the operation of the revelation tournament, and we use law firm partnership decisions to illustrate the general point. Part II extends our analysis to academic tenure decisions, judicial promotions, and law school rankings.

I. REVELATION TOURNAMENTS

In this section, we first provide an intuitive description of the benefits of a two-stage revelation tournament. We then describe how law firm partnership promotions display characteristics of a revelation tournament. Not every promotion decision, however, is suited for a revelation tournament. The section concludes by discussing situations in which revelation tournaments offer the greatest benefits.

A. The Revelation Tournament

A few definitions and assumptions will clarify the rest of the discussion. We refer to those competing against one another for promotion as "candidates." We assume that the candidates desire promotion to a higher position. Those making the decision to promote a particular candidate are referred to as "decision makers."

The term "objective" refers to promotion criteria that are observable, rankable, and quantifiable. Given the objective criteria and two candidates, *A* and *B*, a person can conclude that "*A* beats *B*" or vice versa, according to those criteria. The interpretation of the data does not hinge on the subjective impressions of the person ranking the candidates.

The term "subjective" criteria, in contrast, includes things like judgment, fairness, temperament, creativity, and the ability to work with others. These criteria are fuzzy and initially unknown to those decision makers making promotion decisions. We also assume that candidates have propensities that are preexisting and fixed, such as the propensity towards collegiality or team work. Put differently, candidates are not able to become good team players or highly ethical as soon as they discover that the employer is looking for those characteristics. Candidates can and will lie about their propensities when the stakes are minimal (i.e., talk is cheap). But, in the context of competition with meaningful stakes, they will be less able to compete effectively without revealing their true propensities. We also assume that a tournament cannot be constructed directly on the basis of subjective criteria either because there exists no objective metric with which to rank people or because parties will reveal their subjective attributes only when under the stress of competition over other unrelated objective criteria.

Finally, we assume that subjective criteria are an important predictor of success at a higher level position. Objective criteria may very well be equally or even more important. We only assume that the subjective criteria provide valuable additional information for the promotion decision (sufficient, at least in some cases, to warrant the cost of a two-stage revelation tournament). As an example, consider that judgment, loyalty, and collegiality may be equally as predictive of a candidate's success as a law firm partner (from the firm's perspective, that is) compared with billed hours, transactions completed, or cases won. The process of completing a high-pressure transaction may produce information about how an associate deals with her teammates in such situations, revealing information about collegiality among other attributes.

Subjective evaluations are not always better predictors than objective ones. The empirical literature suggests that objective prediction procedures often outperform subjective ones.[16] We make no claim that a revelation tournament is appropriate for all promotion decisions. The claim is only that such a tournament may generate valuable information under certain conditions. If the most important criteria for promotion are not amenable to objective measurement, then a tournament based on readily observable objective criteria may still be worthwhile if the tournament generates information on the less readily observable and more important subjective criteria. Where the two types of criteria are not related, as discussed below, a revelation tournament offers little of value.[17]

We can formalize the two-stage structure of a revelation tournament as follows:

- Stage 1: Candidates compete with one another based on objective, easily observable criteria. Judged on their relative performance based on the objective criteria, only a fraction of the total number of candidates will make it to Stage 2.
- Stage 2: Decision makers use otherwise hard-to-observe subjective information generated from Stage 1 to make a promotion decision from among the "winners" of Stage 1.

Based on the amount of information available on the subjective attributes of a particular candidate, people may disagree over the rankings of two candidates. For now, assume that decision makers share the same uniform criteria for selection. This assumption means that if every decision maker were fully informed—that is, they knew everything about the attributes of every candidate—they would agree on the best candidate for promotion.[18] As more information about the subjective attributes becomes available, we get closer to this ideal and, accordingly, the chance of disagreement among the decision makers falls.

B. Law Firm Partnership Decisions

Law firm partnership decisions provide a ready application of the revelation tournament. Most elite law firms in the United States have some version of an "up or out" promotion system.[19] They hire large numbers of junior associates, put them

---

16. *See supra* note 5 (citing materials). Indeed, objective statistical criteria, as opposed to the subjective evaluation of legal experts, have been shown to be a better predictor of case outcomes in the Supreme Court. *See* Theodore W. Ruger, Pauline T. Kim, Andrew D. Martin & Kevin M. Quinn, *The Supreme Court Forecasting Project: Legal and Political Science Approaches to Predicting Supreme Court Decisionmaking*, 104 COLUM. L. REV. 1150 (2004) (showing that a statistical model based on case characteristics was superior to the judgments of eighty-three legal experts in forecasting the results of cases in the Supreme Court's 2002 Term).

17. *See infra* notes 22–24 and accompanying text (discussing the needed link between the objective and subjective criteria).

18. We relax this assumption. *See infra* Part I.D.

19. *See* Larry E. Ribstein, *Law Partner Expulsion*, 55 BUS. LAW. 845, 848 (2000) (noting that "firms traditionally have engaged in promotion 'tournaments' in which associates either advance to partnership or leave the firm after a probationary period"). Firms have moved away from the up-or-out system into a two-tiered partnership structure, consisting of equity and non-equity partners. This move has not decreased the stress placed on associates or the tournament

through a grueling apprenticeship period of six to ten years, and then promote the small fraction that performs best. At first blush, law firms appear to present the perfect example of a standard tournament.[20] Although intuitively and superficially appealing, standard tournament theory, fails to capture the realities and nuances of most law firm promotion decisions.[21] If, for example, firms really wanted to maximize the number of billable hours among associates, firms could base promotion standards on one fixed and verifiable criterion: the number of hours billed while an associate. Such a criterion would generate more billable hours than the current promotion system used by most law firms. Similarly, if firms wanted to maximize the volume of business generated by associates, promotions could be based on a tournament explicitly designed to reward associates who generated more business. The reality of law firm promotion systems, however, is that almost none of them use simple systems based on billable hours or the dollar values of deals generated. Instead, it is unclear precisely what the associate needs to do to "win" the tournament. Firms leave undefined both the specific promotion criteria for partnership and the relative weights attached to each criterion.[22] Out of this black box, a vote of the partnership determines the ultimate promotion decision.

As noted, the foregoing does not mean that easily measurable criteria such as billable hours are unimportant. To the contrary, they are important. But subjective factors are also important. The revelation tournament model seeks to explain the interaction between objective and subjective factors.

Law firms' promotion systems can be modeled as a two-round revelation tournament. Easily observable criteria, like billable hours, are evaluated first and used to reduce the number of associates eligible for partnership consideration. The law firms then engage in a second round of evaluation, whereby partners look at traits like judgment, creativity, loyalty, and collegiality. Reducing the pool of candidates from which decision makers must choose partners makes the direct effort of evaluating subjective criteria less costly. Our point is that there is a further benefit: the first stage tournament results in information generated on these very same subjective criteria.

---

feel of associate life in a big firm. *See* John Conley & Scott Baker, *Fall from Grace or Business as Usual? A Retrospective Look at Lawyers on Wall Street and Main Street*, 30 LAW & SOC. INQUIRY (forthcoming 2005) (looking at how law firm economics and culture has changed over time). Ronald Gilson and Robert Mnookin developed the most sophisticated economic model of the "up or out" partnership process. *See* Ronald J. Gilson & Robert H. Mnookin, *Coming of Age in a Corporate Law Firm: The Economics of Associate Career Patterns*, 41 STAN. L. REV. 567 (1989). Like us, Gilson and Mnookin attribute the "trial" associate period to an effort by law firms to screen associates for various subjective characteristics. This paper builds on their work by showing how the billable hour requirement plays a critical role in this screening process. In addition, our framework provides a justification for the murky promotion process used by most law firms.

20. *See* GALANTER & PALAY, *supra* note 3 (making this point most prominently).

21. For critiques of tournament theory as applied to law firm promotion structures, see Price, *supra* note 3; Rutherglen & Kordana, *supra* note 3; Wilkins & Gulati, *supra* note 3. *Cf.* Richard H. Sander & E. Douglass Williams, *A Little Theorizing About the Big Law Firm: Galanter, Palay, and the Economics of Growth*, 17 LAW & SOC. INQUIRY 391 (1992) (critiquing the growth-rate predictions that Galanter and Palay draw from the tournament model).

22. *See* Price, *supra* note 3; Wilkins & Gulati, *supra* note 3.

If one were to ask most law firm partners what characteristic defines a good lawyer, they would likely say "judgment."[23] If pressed further, some might explain that this judgment is primarily associated with an intuitive understanding of how to negotiate ambiguities in the law. Others would say that they look for the creative spark that suggests a future ability to come up with innovative solutions. Last but not least, there will be a few partners who attach value to the ability to schmooze and bring in clients. But as partners extol and promote based on these subjective qualities, associates focus obsessively on objective measures such as billable hours, measures that seem distant from the criteria listed above.

Why this disconnect? Certainly, partners care about billable hours and the number of deals closed. These activities provide revenue for the firm.[24] Associates know this and act accordingly. Yet, these same activities generate information, and law firms would be hard pressed to make a partnership decision without a long track record to use in assessing an associate's more intangible qualities. An associate who significantly outperforms her colleagues on the billable-hours criterion—for example, by billing 3000 hours a year when everyone else is billing around 2500 hours—will likely make it to the second round of the promotion tournament. She is eligible for partnership, but not assured of it. Because of the billable-hours competition and the obsession it induces in associates, however, that same high-billing associate will, perhaps inadvertently, demonstrate an affinity or a lack of affinity for the other qualities that matter most to the firm. Put bluntly, if the associate handles enough cases, the odds are that there will be instances of either dramatic success or abject failure; these extremes can then be plumbed for evidence of judgment. Further, in the drive to outperform her competitors in the billing competition, the associate may reveal herself as a consistent "over-biller" (i.e., one willing to cut ethical corners).

---

23. *Cf.* Leonard M. Baynes, *Falling Through the Cracks: Race and the Corporate Law Firm*, 77 ST. JOHN'S L. REV. 785, 794 (2003) (noting that "the traditional [law firm] hiring criteria often ignore the most important factor of being a good lawyer: judgment"); Therese Maynard, *Teaching Professionalism: The Lawyer as a Professional*, 34 GA. L. REV. 895, 928 (2000) ("'Good lawyers must have the skills required for professional competence. But this is not enough. They must know how to carry the burdens of other people on their shoulders. They must know of pain, and how to help heal it.'") (quoting James D. Gordon III, *Law Review and the Modern Mind*, 33 ARIZ. L. REV. 265, 271 (1991)); Joseph W. Rand, *Understanding Why Good Lawyers Go Bad: Using Case Studies in Teaching Cognitive Bias in Legal Decision-Making*, 9 CLINICAL L. REV. 731, 734 (2003) ("'The good lawyer brings more to bear on a problem than legal knowledge and lawyering skills. She brings creativity, common sense, practical wisdom, and that most precious of all commodities, good judgment.'") (quoting Paul Brest & Linda Krieger, *On Teaching Professional Judgment*, 69 WASH. L. REV. 527, 529 (1994)).

24. *See* William J. Wernz, *The Ethics of Large Law Firms—Responses and Reflections*, 16 GEO. J. LEGAL ETHICS 175, 178 (2002) (noting that "broad disparities in profits [among law firms] appear to be principally determined by numbers of billable hours and by leverage, the ratio of associates to partners"); M. Cathleen Kaveny, *Billable Hours in Ordinary Time: A Theological Critique or the Instrumentalization of Time in Professional Life*, 33 LOY. U. CHI. L.J. 173, 175 (2001) ("One way large law firms make money is by charging out their associates' time for more than they are paying the associates in salary; the difference (less overhead) is distributed to partners as profits. The longer associates work, the more money partners make.").

C. Information Types and Revelation

Revelation tournaments work best when the ultimate promotion decision depends on subjective, hard-to-observe and hard-to-verify characteristics, such as ethics, creativity, collegiality, and so on. We can further divide the subjective information generated through a revelation tournament along two additional dimensions. First, the rate at which subjective information is generated as a by-product of objective competition may vary. Second, the relationship between the subjective information and the intensity with which candidates compete over the objective criteria (with resulting stress imposed on the candidates) may vary according to context. We discuss below each dimension and its implications for the desirability of a revelation tournament.[25]

1. Quantity Requirements and Diminishing Returns

Collecting information about a promotion candidate that is based on objective criteria may help shed light on harder-to-measure subjective criteria but, past a certain point, such gains in understanding may be limited. Suppose that a law firm can acquire subjective information by observing an associate's first year of work alone. In this case, assuming the candidates for promotion have generated some minimum, yet fully informative, amount of work product, a tournament based on objective criteria may not add to the subjective information already generated.

Promotion situations are good candidates for an information revelation tournament when the accuracy of decision makers' observations based on the subjective criteria increases significantly with the amount of effort put in by candidates in generating objective work product. Given the noise inherent in determining whether an associate possesses good judgment, good character, and genuine loyalty, law firm promotions—and many other job promotions where decisionmaking ability is an important criteria—appear to meet this requirement. While good performance in an associate's first year of work may indicate strong subjective characteristics, confidence in this assessment is possible only when decision makers can consider a larger body of work product.

---

25. Participants in a revelation tournament may already possess information about themselves of the sort that decision makers will determine subjectively by means of the tournament. Where participants possess this information beforehand, the revelation tournament provides a means for decision makers to discern the information. On the other hand, participants may not possess this information about themselves beforehand. In this case, the revelation tournament functions more to generate information.

In either case, the following question arises: is a revelation tournament the most cost-efficient method of gaining information? Generating new information is costly. Other, more direct means of generating the information than a revelation tournament may exist. Nonetheless, even where candidates do not have full information about themselves, they may actively desire to portray themselves in a certain light (even if that depiction is a false one). A candidate may not know ahead of time whether he would act ethically when faced with a large monetary temptation; however, regardless of how he would in fact behave, he would have an incentive, if asked, to declare himself ethical. A revelation tournament provides a method to distinguish among these participants. Particularly where the desired information is subjective, and thus hard to measure objectively or to verify ex ante, a revelation tournament provides a credible method of generating information.

2. High-Stress Information

A tournament (more colorfully, a "rat race") often puts candidates in situations of high stress.[26] Faced with a time crunch, associates face decisions about whether to cut corners in their work and how to juggle various client priorities. Such decisions involve "judgment" on the part of associates and, as a result, provide more information on the subjective characteristics of associates than may be provided by more mundane, low-stress work. For example, an associate who routinely over-bills a client to pad her hours billed might not exhibit this trait in a work situation that did not pressure her to compete on billable hours.

Tournaments reward participants on the basis of their performances relative to each other. Even if everyone does well, only a small fraction will be promoted. This rat race can have effects we ordinarily think of as negative. Some participants who perform poorly on objective criteria may in fact display high subjective attributes. Nonetheless, these participants will get culled in the first-stage tournament over objective criteria in a revelation tournament. For candidates who are worried about winning and do not see themselves as necessarily ahead of the others, the tournament system can encourage them to take higher-than-normal risks and even sabotage each other.[27] If the promotion percentage is small enough (for example, only one in fifty associates gets promoted to partnership) these perverse incentives will be widespread. For institutions such as law firms that value teamwork and want their associates to reduce, rather than exacerbate, risk it seems strange to have a promotion scheme that encourages precisely the type of behavior that the firm does not want.[28]

When do the benefits from a revelation tournament likely outweigh the costs? An organization will be more apt to bear these costs when the promotion in question

---

26. The rat race reference comes from papers by Renee Landers and George Akerlof. Their general idea is similar to ours in that these authors see the effect of rat races (a term that is used to connote what otherwise appear to be inefficiently high expenditures of effort) as producing otherwise hard-to-observe information. *See* George Akerlof, *The Economics of Caste and of the Rat Race and Other Woeful Tales*, 90 Q.J. ECON. 599 (1976) (demonstrating how workers may work long hours in order to signal unobservable productivity); Renee M. Landers, James B. Rebitzer & Lowell J. Taylor, *Rat Race Redux: Adverse Selection in the Determination of Work Hours in Law Firms*, 86 AM. ECON. REV. 329 (1996) (documenting empirical evidence that law firms do use hours billed as a method to select among workers, where the underlying dynamic appears to be an adverse selection type, one similar to that suggested by Akerlof). For other articles using the rat race concept to study internal labor markets, see Hajime Miyazaki, *The Rat Race and Internal Labor Markets*, 8 BELL J. ECON. 394 (1977); Stuart S. Rosenthal & William C. Strange, Agglomeration and Hours Worked (Oct. 3, 2005) (unpublished paper), http://www.rotman.utoronto.ca/%7Ewstrange/working%20papers%2010-2005/Agglomeration%20and%20Hours%20Worked-10-3-05.pdf.

27. *See* Kong-Pin Chen, *Sabotage in Promotion Tournaments*, 19 J.L. ECON. & ORG. 119, 120 (2003).

28. One of us has written, nonetheless, that law firms may reduce the negative impact that fierce tournament competition may otherwise have on collegiality through a multi-round tournament. In such a tournament, only a progressively smaller group of winners would continue in active competition. The losers, on the other hand, would remain with the firm (at least for some time), motivated through high salary (among other incentives) to continue to exert effort despite losing a tournament stage. *See* Wilkins & Gulati, *supra* note 3, at 1650–51.

involves not simply a pay raise, but an increase in discretionary powers and a decrease in monitoring of the worker's activities. Less monitoring means that there is a smaller chance that a worker's mistake in judgment will be caught and corrected before it causes a large negative consequence for the organization.

At the beginning of their legal careers, associates are monitored to some degree. Once an associate gets promoted to partnership, monitoring drops to nearly zero and discretionary powers correspondingly increase. It is important to the firm that associates exercise good judgment, but it would be a disaster if a partner exercised bad judgment. For example, take the partner who ignores a conflicts problem in order to take on a lucrative representation of a new client. Or take the partner who forgets to fill out the final paperwork to be admitted to the bar. In both cases, the partner's bad judgment exposes the firm to huge risks.[29] If possible, the firm would like to eliminate candidates who make these bad judgment calls. Despite the costs of a rat race, learning about how associates function under stress (and which associates engage in questionable judgment calls to get past the first round) may assist law firms in selecting partners better able to function in the best interests of the firm without any monitoring.[30] Because of the competitive nature of the first stage of a revelation tournament, such a tournament may be useful in revealing information about how candidates handle themselves in a high-stress environment. Without a competitive tournament, obtaining this particular type of information may prove costly to decision makers.

The story thus far has been rosy; the law firm wants associates who do not cut corners or make questionable judgment calls. The revelation tournament yields this information. But consider the case of a firm that wants to promote associates willing to cross ethical lines in search of profits, or one that wants to promote aggressive people who will live and die for the firm at the expense of their personal lives.[31] The revelation tournament generates information for these firms too. The competition over billable hours yields useful information for all firms. It does not matter whether the firm ultimately is looking to promote "angel" or "devil" associates.

D. Revelation Tournaments and the Decision Makers

We have assumed that all decision makers share the same motivation in making promotion decisions. In fact, not all decision makers may have the same preferences in

---

29. These are both examples from the real life story of Milbank Tweed partner John Gellene. *See* MILTON C. REGAN JR., EAT WHAT YOU KILL: THE FALL OF A WALL STREET LAWYER (2004).

30. An associate with tendencies to cut ethical corners (or exercise other forms of bad judgment) may hide these tendencies as an associate if she realizes that a second round will occur that will block people exhibiting this sort of behavior from making partner. Nonetheless, associates may act to hide their bad judgment even without a first-round tournament based on objective measures of productivity. Compared with this baseline, a first-round tournament will provide added inducement for associates to reveal their true character—doing so may at least get the associate past the first round of the tournament (and allow the associate to remain longer at the firm than otherwise).

31. On this point, see Landers et al., *supra* note 26, at 331–35 (constructing a model where firms use billable hours to separate workers by how much they value leisure).

selecting a candidate for promotion. But the establishment of a first-stage tournament based on objective criteria helps to generate agreement over at least a minimum set of criteria needed for promotion. When decision makers gather ex ante to determine a set of objective criteria, they have the opportunity to assess what criteria they hold in common. If they were not to attempt an objective measure, this dialog might not occur. Moreover, since the first stage is not determinative, it presents decision makers with less pressure to fight for criteria that perfectly match their own preferences; the result may be desirable compromises. And because the criteria for the first-stage objective tournament are determined before any candidates have made themselves known, individual decision makers may negotiate over the first-stage criteria without having already invested in a particular candidate. Again, this may facilitate compromise.

Decision makers in varying contexts may also differ in two other respects that may affect the viability and benefit of using a revelation tournament to generate information.

1. Agents versus Principals

Revelation tournaments may have particular benefit where decision makers act as agents for someone else. A decision maker, as agent, might favor a candidate for illegitimate or selfish reasons. That is, the agent's reasons for promoting candidate *X* might diverge from the interests of the principals of the organization. Where interests diverge, the agent/decision maker may not necessarily want to force out information about his candidate. More information brings to light the positive and negative attributes of the candidate. When information on subjective criteria remains hidden, however, each agent/decision maker has the opportunity to "spin" the merits of the candidate, often in a non-transparent fashion. Without quantifiable evidence, it is difficult to argue against the agent's assessment.[32] The point is simple: the more an agent wants to be able to spin a candidate's qualifications, the less that agent will want an effective revelation tournament.

Even in the most profit-focused firm, the private incentives of individual agents can differ from those of the firm. Put differently, politics will likely play a role even in the law firm context. Individual partners may have illegitimate reasons for favoring certain less qualified candidates over others. Specific partners, for example, may be homophobic or racist and therefore disfavor gay and minority candidates. To the extent that other partners recognize this proclivity, their suspicions will be heightened if candidates favored on account of their supposed "good judgment" have low scores on the first-stage objective criteria, such as billable hours or cases won. A partner may attempt to make further arguments in support of a particular candidate, all based on

---

32. One might ask why any principal, in the absence of a paper trail, would believe an agent/decision maker who represents that candidate *X* is the best candidate. The principal, after all, knows that the agent's preferences might diverge from his own. And, as a result, the agent has an incentive to lie about the candidate's qualifications. Since the agent is aware of the principal's suspicion, however, the agent's best tactic might be to mix his responses: lie about a candidate's aptitude for the job at certain times but not at others. If the agent mixes his responses and there is no paper trail, the principal can't be certain whether the agent is lying or not. The revelation tournament eliminates the "mixing" option. Through the tournament, the principal or principals learn about the true, subjective attributes of the candidate.

subjective "good judgment." But these arguments will be harder to make when the candidate's objectively-measured track record provides other partners with information on the more subjective aspects of "good judgment" to the other partners.

In the context of a law firm, market forces will push the firm toward devising mechanisms such as revelation tournaments to correct for hidden and narrowly-held motivations that may get in the way of obtaining more profit.[33] In other contexts, where decision makers hold diverging opinions on what constitutes the "best" candidate and profits are only a secondary concern (if at all), the market may have little influence, such as in the context of law professor tenure decisions and Supreme Court nominations, as we discuss later.

2. Decision Maker Sophistication and Motivation

Where decision makers (or principals in the case of agent/decision makers) lack the sophistication or the time and resources to appropriately assess subjective criteria, information generated through a revelation tournament will do little good. Indeed, establishing a tournament designed to reveal new subjective information may result in candidates in the tournament attempting to generate new information to mislead the decision makers. But information about matters such as the ability to exercise judgment may be difficult, costly, or impossible to fake. Many first-year associates, for instance, do not know whether they have good judgment. It is only the competition to bill high numbers of hours or complete deals quickly that will force the associate to make choices that will reveal her ability to exercise judgment.[34] And law firm partners are well suited to detect major lapses in judgment such as the failure by an associate to address a key argument in a brief or to include a crucial term in a contract. However, as discussed in the next section, situations in which a revelation tournament may otherwise have promise (such as the publication of law school rankings based on objective measures) may fail to support such a tournament due to the lack of expertise and sophistication on the part of consumers of such rankings.

Decision makers may also individually lack the motivation to fully assess any additional information revealed as part of a first-stage tournament based on objective factors. Particularly where decision makers are dispersed and fail individually to appreciate the benefit of analyzing revealed information, a revelation tournament will add little value.

---

33. Market forces may not always result in the most efficient selection systems. *See, e.g.*, Tom Ginsburg & Jeffrey A. Wolf, *The Market for Elite Law Firm Associates*, 31 FLA. ST. U. L. REV. 909, 931–48 (2004) (contending that decentralized competition among law firms to hire top law students pushes firms to make hiring decisions earlier than otherwise, leading to less information on the attributes of the law students).

34. There will be other subjective characteristics that the employer cares about where the employer has a better recognition of an employee's proclivities, such as the propensity for honesty or collegiality. Even here, a lengthy competition can produce information-forcing if we assume that those lacking the propensity for honesty or collegiality will find it more difficult to display those characteristics under pressure than those who possess them.

II. REVELATION TOURNAMENT APPLICATIONS

Revelation tournaments are not for every situation. As discussed above, the type of subjective information that is generated in the course of a competition based on objective criteria varies according to (1) whether the more important information for a promotion decision is subjective and otherwise hard-to-observe, (2) the rate at which subjective information is generated through objective competition, and (3) the importance of "high stress" in generating the subjective information. Moreover, the decision makers in a promotion decision may have varying preferences and motivations. Some decision makers who are acting as agents may resist a revelation tournament in order to give themselves room to justify actions that further their own welfare at the expense of the ultimate principals. Imposing a revelation tournament in such situations may help align the incentives of agents and principals.

We discuss three applications where a revelation tournament may either already occur or potentially could occur: (1) law school tenure decisions, (2) judicial promotion decisions, and (3) law school rankings. The examples differ. Academics operate in a non-profit setting; promotions reflect assessments about the junior faculty's likely contributions to knowledge and student enrichment. Federal circuit court judges operate in a political system, with promotions to the Supreme Court resting on political calculations. Finally, law schools operate at the crossroads of a university setting and a market setting. They must respond to demands by students and alumni, while at the same time pleasing the administration. This range of examples allows us to make some preliminary judgments as to the value of using revelation tournaments. We may also better determine how this value may vary according to both the motivations of the decision makers and type of subjective information.

A. Law School Tenure Decisions

Like law firm partnership decisions, tenure is an "up-or-out" promotion system.[35] After a trial period, the junior faculty member is either promoted to associate professor or fired. Many of our law school colleagues would be outraged at the suggestion of

---

35. There is vast literature on the economics of the academic tenure process. *See* William O. Brown Jr., *University Governance and Academic Tenure: A Property Rights Explanation*, 153 J. INSTITUTIONAL & THEORETICAL ECON. 441 (1997); H. Lorne Carmichael, *Incentives in Academics: Why Is There Tenure?*, 96 J. POL. ECON. 453 (1988); Fritz Machlup, *In Defense of Academic Tenure*, 50 AAUP BULL. 112, 119–20 (1964), *reprinted in* MATTHEW W. FINKIN, THE CASE FOR TENURE 9, 22–23 (1996); Richard B. McKenzie, *In Defense of Academic Tenure*, 152 J. INSTITUTIONAL & THEORETICAL ECON. 325 (1996); Michael S. McPherson & Morton Owen Schapiro, *Tenure Issues in Higher Education*, J. ECON. PERSP., Winter 1999, at 85; Michael S. McPherson & Gordon C. Winston, *The Economics of Academic Tenure: A Relational Perspective*, 4 J. ECON. BEHAV. & ORG. 163 (1983); Gordon Tullock, *Corruption Theory and Practice*, CONTEMP. ECON. POL'Y, July 1996, at 6, 9–10. None of these articles, however, points out the role of subjective information forcing in the tenure process. In one sentence, McKenzie suggests that he may have been thinking along these lines, saying: "To induce prospective faculty to exert the amount of effort necessary to be *ability-revealing*, universities must offer a 'prize' that potential recruits consider worth the effort." *See* McKenzie, *supra* at 337 (emphasis added).

basing an up-or-out tenure vote solely on citation counts and the number of articles written.[36] Indeed, we have colleagues who are outraged at the suggestion that citation counts should be considered at all. Nonetheless, law schools and many other faculty departments use a de facto two-round promotion system. Few assistant law professors today receive tenure with only one scholarly piece published. Junior faculty must produce a minimal number of articles and generate a minimum score on their teaching evaluations in order to be seriously considered for tenure.[37] Once they have crossed those minimum thresholds though, the evaluation becomes subjective. This is where qualities such as the candidate's creativity, loyalty, and judgment are evaluated.[38]

---

36. Given the current citation practices of legal academics, where it is not uncommon for articles to cite hundreds, if not thousands, of sources with seemingly little quality control, it is probably unwise to attach too much value to these counts. That said, we are also unwilling to conclude that a citation count would have *no* predictive value in something like a promotion or hiring decision. For example, we are willing to venture that it is likely that citation counts would outperform some of the other criteria that are sometimes considered, such as class rank, law school attended, prestige of judicial clerkship, or gut instinct. Citation counts may also be biased towards certain groups and can be gamed by the various participants (for example, citation clubs arise where scholars implicitly or explicitly agree to cite each other). Again, assuming equal predictive power of the different criteria, the question should be whether these counts are more or less biased than the others and whether those biases can be corrected. The biases inherent in gut-instinct-based decisions, for example, are likely to be much harder to uncover and correct. On possible bias in citations, see Nancy Levit, *Defining Cutting Edge Scholarship: Feminism and Criteria of Rationality*, 71 CHI.-KENT L. REV. 947, 949–52 (1996); *see also* Daniel B. Klein & Eric Chiang, *The Social Science Citation Index: A Black Box—With an Ideological Bias?*, 1 ECON. J. WATCH 134, 137–39 (2004) (discussing bias in Social Science Citation Index (SSCI) measures).

37. Note that the "tournament" for some junior faculty is simply a competition to achieve a minimum quantity threshold and not a relative comparison with other faculty. So long as achieving the quantity threshold both (a) creates a body of work and allows decision makers to observe the process by which the junior faculty member goes about her research and (b) places the junior faculty member under some degree of stress, such an absolute threshold may serve a function similar to that served by a more relative tournament ranking. Indeed, absent external shocks common to the production of articles, there is no need to run a tournament. A quantity threshold works just as well. See *supra* note 2 (explaining the "common external shock" justification for relative rankings). Although data on tenure standards for law schools is hard to come by, our sense is that the quanity-of-article requirement is quite strict. For example, one of us recently received a request for an outside tenure review from a prominent law school. According to the letter, two articles—unless they were of exceptional quality—would not justify tenure. At this school, the presumption was "against" tenure unless the junior scholar had produced at least three articles.

38. Most academics agree that creativity is a desired characteristic. *See* Michael H. Gottesman & Michael R. Seidl, *A Tale of Two Discourses: William Gould's Journey from the Academy to the World of Politics*, 47 STAN. L. REV. 749, 757 (1995) ("Like Socrates, good academics are gadflies. A significant part of their business is to write, speak, and think provocatively. A professor's prospects for publishing in elite journals depends in large part upon writing something new and different. Tenure standards at the top institutions invariably require that scholarship be original and creative."); William W. Van Alstyne, *Academic Freedom and the First Amendment in the Supreme Court of the United States: An Unhurried Historical Review*, L. & CONTEMP. PROBS., Summer 1990, at 79, 87 ("A faculty, especially a research

Requiring that candidates for tenure meet a first-round minimum threshold of productivity (or produce more work than some fraction of their peers) provides the incentive for untenured academics to produce the body of work necessary for a meaningful second-round subjective evaluation of their academic abilities. This insight about revelation tournaments does not reflect a preference for objective evidence over subjective evidence. The argument is not that quantifiable things are the only things that matter. Indeed, one could believe that quantity of scholarly production is meaningless and still support including quantity as a necessary first-stage prerequisite. It is simply that the effort to meet such objective criteria has the potential to force the revelation of subjective traits.

1. Information Type

What kind of subjective traits are generated in a competition to produce scholarly articles? If a candidate does produce a number of articles, this body of work gives the evaluation committee not only the opportunity to count the number of articles and cites to them, but an opportunity to observe both the candidate's creativity as embodied in the articles and the *process* by which those articles were generated. Junior faculty members attempting to write their first few pieces will often consult with other faculty members, bouncing ideas off their colleagues. This process provides insights into how a particular junior faculty member comes up with ideas and her future potential for new ideas. A junior professor may believe that she has the capability of generating innovative ideas before she starts a position as an untenured professor but learns, for whatever reason, that she does not, through the "trial" assistant professorship period.[39] For some academics, a single path-breaking article and one stellar set of teaching evaluations might be all that is needed to discover these qualities. Nonetheless, for the majority of academics, a series of papers and evaluations will lead to a more precise estimate of that scholar's potential.

Note that these traits—creativity, collegiality, drive—are all difficult to measure through objective criteria. Such subjective qualities are also hard to convey credibly. Who would believe the statement "I am very creative" without any articles or other accomplishments to back up this assertion? Moreover, observing how a colleague

---

faculty, is employed professionally to test and propose revisions in the prevailing wisdom, not to inculcate the prevailing wisdom in others, store it as monks might do, or rewrite it in elegant detail. Its function is primarily one of critical review: to check conventional truth, to reexamine ('re-search') what may currently be thought sound but may be more or less unsound."). In fact, one creative and innovative idea is valued far more than a dozen little extensions of other people's ideas. *See, e.g.*, Ronald Coase, Centennial Coase Lecture, http://www.law.uchicago.edu/events/coase_lecture.html (last visited Aug. 28, 2005) (describing his academic career as largely consisting of two ideas); *but see* Daniel A. Farber, *The Case Against Brilliance*, 70 MINN. L. REV. 917 (1986) (arguing that the trend towards valuing "novelty, surprise, and unconventionality" in economic and legal theory is problematic).

Nonetheless, a preliminary question that is asked at the initial stage in almost every tenure decision is not about creativity, but rather quantity: "How many articles has she published?" This question is asked even though everyone agrees that the sheer quantity of articles is far from being the most important criterion for promotion.

39. Whether the untenured professor voluntarily reveals this subjective information to the promotion committee, however, is a different question, to which the answer is often "no" in the absence of some information-revelation tournament.

performs under "high stress" (such as may be experienced when under the shadow of an upcoming tenure decision) provides salient information on drive and willingness to cut corners in research. On the other hand, high stress may also provide information on how willing a professor is to maintain collegiality (attending workshops, commenting on papers, etc.) even when under tight time constraints. The subjective nature of the important criteria, the difficulty candidates may experience in communicating these traits credibly, and the importance of high stress in flushing out evidence of subjective traits, make the tenure decision a fruitful area for the employment of a revelation tournament.

2. Nature of Decision Makers

Tenured law professors typically make the tenure decisions regarding junior faculty. While many universities require central campus approval, most faculty decisions are accepted without question. Law professors making a decision on one of their own possess the expertise to assess the quality of scholarship, collegiality, and scholarly drive of a potential tenure candidate. Moreover, law professors, acting as agents of the law school and the university, have discretion in determining whether a candidate for tenure is "best" for the law school. While putatively supporting a candidate on the basis of merit, the danger exists that a particular faculty member may have ulterior motives, and this support may run counter to the overall goals of the law school. An example would be the promotion of a candidate with questionable academic abilities but sterling political credentials. A senior faculty member's exploitation of her position in order to derive private benefits would be another example. The greater the discretion senior faculty enjoy, the greater is the incentive for junior faculty to engage in wasteful favor-currying activities. Such activities could include gratuitous citations, even where the senior colleague's work is only tangentially relevant. Or, worse, the young faculty member might build on the work of a senior colleague, even when that work is not worth building on. In the same vein, junior faculty might praise the work of senior faculty in a workshop, fearing the consequences of revealing the shortcomings of a paper produced by the senior colleague. Finally, junior faculty might spend time hiding their political preferences.[40]

A revelation tournament may help reveal the hidden motivations of a particular faculty member in supporting the tenure case for a junior professor. Those senior faculty who support a junior faculty member because of that person's political views or skill in currying favor (as opposed to academic merit) may contend that the junior professor, though lacking a long academic track record, has academic potential and a capacity for creativity. Of course, other faculty may receive such claims with a degree of skepticism, though in the absence of any definitive body of work, it is difficult to directly refute such claims. When junior faculty are forced to meet a minimum quantity threshold, however, the emerging information on creativity, collegiality, and

---

40. Note that the difference between the collegial faculty environment and an environment where junior faculty spend time currying favor is not clear. In a less pejorative light, some might characterize the activities described above as showing "respect" for senior colleagues. And a work environment full of respected and respectful colleagues is more conducive to the production of knowledge. Respect, in other words, builds an intellectual community.

thoroughness of research will make it more difficult for supporters to make such broad-based claims.

B. Applying the Revelation Tournament to Judicial Nominations

Most candidates for elevation to the Supreme Court have had prior judicial experience.[41] Yet, in making promotion decisions, we largely ignore the information that exists about their prior judicial performance, data that could be used to structure a promotion tournament.[42] Why do we ignore this potentially useful information? Even if we do not believe that the judge with the largest number of citations or opinions written should become the next Supreme Court Justice, favoring candidates with such attributes in the first round of competition will induce more judges to produce judicial opinions (and strive to write opinions that others will cite). Congress and the general public may use these opinions to get a better sense of the views and judicial decision-making capabilities of a particular candidate for the high Court. As best we know, no President or senator has ever made a serious attempt to set out objective criteria on judicial performance and then collect the necessary empirical evidence on the matter.[43] Instead, many experts assert that Justices should be chosen based on temperament, empathy, and fairness—qualities that they say are unrepresented by an objective evaluation of the nominee's influence as a circuit court judge.[44]

In earlier work, two of us proposed using three categories of objective criteria for promotion to the Supreme Court: productivity, reputation, and independence.[45] For circuit court judges, the number of published opinions (corrected for intercircuit differences) provides an objective method of ranking judges based on productivity. Objective proxies also exist for reputation among other judges, including the number of times a judge's opinions are cited outside of the judge's circuit and the number of times other judges invoke the judge by name in their opinions. Finally, for rankings based on independence, one possible objective measure is to track how often a particular judge dissents (or is dissented against) where the opposing judge is a judge

---

41. *See* Lee Epstein, Jack Knight & Andrew D. Martin, *The Norm of Prior Judicial Experience and Its Consequences for Career Diversity on the U.S. Supreme Court*, 91 CAL. L. REV. 905, 909–17 (2003) (noting and then criticizing the fact that most Supreme Court nominees come from the pool of lower circuit court judges).

42. Stephen Choi & Mitu Gulati, *Choosing the Next Supreme Court Justice: An Empirical Ranking of Judicial Performance*, 78 S. CAL. L. REV. 23 (2005).

43. For an extended discussion of the subject, see Choi & Gulati, *supra* note 4, at 305.

44. For examples of articles critiquing the judicial tournament idea because it does not measure intangibles such as collegiality, justice, and fairness, see Stephen Goldberg, *Judicial Promotions and the Heisman Trophy*, 32 FLA. ST. U. L. REV. (forthcoming 2005); William P. Marshall, *Be Careful What You Wish for: The Problems with Empirical Rankings as a Method to Select Supreme Court Justices*, 78 S. CAL. L. REV. 119 (2004); John V. Orth, *Judging the Tournament*, JURIST, Apr. 15, 2004, http://jurist.law.pitt.edu/forum/symposium-jc/choi-gulati-orth-taha.php (symposium on judicial selection). For an extensive discussion of what qualities make for a good Supreme Court nominee, see Michael Gerhardt, *Merit versus Ideology*, 26 CARDOZO. L. REV. 353 (2005).

45. *See* Choi & Gulati, *supra* note 4, at 305–12.

associated with another political party, that is, the party of the President who appointed the judge.[46]

1. Information Type

The three objective categories of merit for Supreme Court nomination are coarse measures of what many consider important factors in the selection of a great Supreme Court Justice. They fail to capture important elements of good judging, elements such as judgment, fairness, empathy, temperament, and the ability to forge a consensus.[47] Nonetheless, the very act of writing opinions will generate information on the views of a particular judge. A judge with strong views will find it difficult to mask these views across a large number of decisions involving issues that relate to these views (such as gun control, abortion, and so on). Creating a first-selection round for nomination to the high Court—one that will cull out most of those judges who do not score highly on the objective criteria—would create an incentive for judges to leave a paper trail that would be useful in assessing the arguably more important subjective qualities.

One could respond that a tournament is not necessary to learn about a judge's subjective qualities. Even the least productive circuit court judge, for example, may produce enough of a track record during the first year on the bench to assess her subjective judgment and ideological tendencies. We disagree with this assessment of the relationship between, on the one hand, the level of effort made by judges (and their productivity), and on the other hand the production of information useful in assessing the subjective criteria important to the selection of a Supreme Court Justice. In the absence of a tournament structure, circuit court judges have an incentive, even over a long period of time, to avoid creating a high profile by dealing with controversial matters. Instead of focusing on job performance, those judges seeking promotion may divert their energies to engaging in tasks that please individual senators—tasks such as serving on committees in which particular senators take an interest—or attending fund raisers for specific causes.

In contrast, a tournament puts judges under pressure to generate published opinions, dissents, and citations. Citations would be a particularly important aspect of the tournament for judges. The desire to receive more citations would drive judges to seek higher-profile, more controversial matters. A judge's opinion in a high-profile case, in turn, is more likely to reveal subjective information on the judgment, wisdom, and ideology of a particular judge. As a judge accumulates more "high-judgment" events, politicians and the general public have more information with which to assess whether the judge makes judicial decisions in an effective manner. Put differently, the rat race forces people to make judgment calls on *difficult* matters—and that reveals information about key subjective attributes.

---

46. *See* Choi & Gulati, *supra* note 42, at 40–68 (providing a ranking based on productivity, reputation, and independence for federal circuit court judges based on opinions authored from 1998–2000).

47. *See* Goldberg, *supra* note 44 (asserting the importance of these types of subjective attributes); Marshall, *supra* note 44 (similar); Gerhardt, supra note 44 (similar).

2. Nature of Decision Makers

Why, then, do we not see a revelation tournament or the use of objective measures in the area of Supreme Court nominations? One possible reason is that a principal-agent problem exists between politicians (the agents) and the voting public (the principals). Politicians, whether due to interest-group pressures or other reasons, often have views about what constitutes a strong judicial candidate. Some views are widely held, such as a preference for judges who work hard and are competent and intelligent (call these "merit-related" factors). Others are less widely held, such as views that a judge should support abortion rights or gun control (call these "ideology factors"). Our apprehension is that politicians may praise a candidate for the high court as the most qualified person for the job when, in fact, the true motivation behind this assessment may depend on more ideological preferences (e.g., on abortion rights).

We suspect that politicians, in order to keep subjective information about individual candidates hidden, tend to reject the use of objective measures that may generate information on a particular candidate. Rather than select candidates based on a long track record (useful in determining subjective characteristics), politicians may purposely seek out candidates with little or no record.[48] Without a record, the public finds it difficult to assess merit, and nominators can easily make a claim of merit for the person of their choice. Politicians may also prefer a system where judges seeking promotion have to curry favor as opposed to one where judges focus on performing according to generally accepted objective criteria.

A revelation tournament would place greater emphasis on merit and less on ideology (or the currying of favor). Our objective measures, at first blush, would seem to give an advantage to those who do well on productivity, citation acquisition, and the willingness to write independently. They do, but only insofar as they create the pool of possible candidates. In round two of the revelation tournament, the politicians (and members of the public) may then use the subjective information generated from the competition in the first round to assess the subjective characteristics of the candidates.

If the tournament's first round provides politicians who subscribe to some narrowly held ideological viewpoint information that is useful to them in determining whether a particular judge may favor the same viewpoint, the first round also provides that information to other politicians holding opposing viewpoints, as well as to the general public. Assuming these ideological viewpoints are in fact narrowly held, the revelation that a judge has been nominated based on these viewpoints may undermine the public's support for the candidate. While authoring a large number of opinions may get a judge through the first stage of a judicial nomination tournament, the body of those same opinions may doom that judge in the second stage if it reveals an unpopular ideological bent in the judge's opinions (or other flaws from the perspective of the public, such as having a lack of empathy for the human condition, as some have characterized at least one prominent and highly productive circuit court judge). Without the revelation tournament, there is an incentive for both the candidate and her political sponsors to hide the facts. With the revelation tournament, they are forced to reveal the facts.

---

48. *See, e.g.*, Sheryl Gay Stolberg, *Battle Over Judgeship Tests Congressman's Loyalties to People and Party*, N.Y. TIMES, Mar. 15, 2003, at A14 (noting that Miguel Estrada, Bush nominee to the D.C. Circuit, had "published little that would hint at his judicial philosophy").

While a normative argument exists for a revelation tournament in the area of Supreme Court nominations, there are arguments on the other side. In the case of judicial promotions, a revelation tournament may help reveal information on the preferences of politicians in championing a particular candidate for judicial nomination. This revelation of the preferences of a politician-agent will, however, do little good if the principals (the voting public) are unable to distinguish between accurate information generated on a politician's preferences and manufactured information designed to confuse and lull the public into supporting the politician's nomination choice. We think this risk remote in the context of judicial promotions. While the voting public is dispersed, several intermediaries (such as newspapers, political commentators, and so on) are well placed to decipher the information generated by a tournament on the subjective qualities of a judicial nominee and the political leanings of the politicians who support (and oppose) the nominee. The public nature of a Supreme Court nomination in particular, when combined with competition among such intermediaries, would mitigate the effect of manufactured information. Simply claiming "my candidate is the best"—even repeatedly—will not carry much weight in the face of respected intermediaries providing concise and credible analysis of a nominee's judicial track record. We are less optimistic about the ability of dispersed consumers to digest information in the context of law school rankings, as discussed below.

C. Applying the Revelation Tournament to Law School Rankings

Each year, law students, prospective law students, deans, professors, and alumni wait in anticipation of the *U.S. News & World Report* ("*U.S. News*") law school rankings. Many law school deans have publicly condemned these rankings. In 1998, John Sexton, then dean of New York University School of Law, stated: "I hope that U.S. News will think about whether the profits generated by its rankings are purchased at too great a cost to its own journalistic integrity." He went on to call the rankings "misleading and dangerous."[49] The Association of American Law Schools (AALS) has issued statements challenging the *U.S. News* methodology, its findings, and the very act of ranking law schools.[50] Scholars who study the ranking methodology note its many

---

49. Press Release, Ass'n of Am. L. Sch., Association of American Law Schools Calls on U.S. News & World Report to Stop Ranking Law Schools; Study Challenges Validity of Magazine's System (Feb. 18, 1998), *available at* http://www.aals.org/ranknews.html.

50. In February 1998, the AALS sent a letter to 93,000 law school applicants, entitled *Law School Rankings May Be Hazardous to Your Health.* Numerous deans endorsed this letter. The thrust of the letter is that rankings are misguided, uninformative, and misleading. LAW SCHOOL DEANS SPEAK OUT ABOUT RANKINGS (Law School Admission Council 2005), *available at* http://www.lsac.org/pdfs/2005-2006/RANKING2005-newer.pdf. The letter states that "[t]he idea that all law schools can be measured by the same yardstick ignores the qualities that make you and law schools unique, and is unworthy of being an important influence on the choice you are about to make. As the deans of schools that range across the spectrum of several rating systems, we strongly urge you to minimize the influence of rankings on your own judgment." Before it sent the letter, the AALS commissioned a study of the *U.S. News* rankings. The study concluded that "[t]here are many serious problems with the *U.S. News* system for evaluating law

failings: for instance, that the measure is biased in favor of private schools over public schools.[51]

Despite this public protest, condemnation, and ridicule, *U.S. News* sells. Potential law students rely on the rankings in selecting law schools. Law school alumni celebrate upward movement in the ranking of their school and care when their school falls from the top 10, from the top 50, or out of the second tier. Even at top schools, students convene town hall meetings and write op-ed pieces in the student newspapers when the school's ranking slips. Finally, many law professors look to *U.S. News* when deciding which student journal—from among the hundreds of such journals—to submit an article.

The *U.S. News* rankings are an example of an objective measure that presents problems. *U.S. News* doesn't accurately measure what law students and employers are looking for: the quality of a legal education. Perhaps measuring the quality of a legal education is impossible. But the fact that the ranking is imperfect, imprecise, or just plain bad is not enough to jettison its use. If the ranking forces revelation of otherwise hard-to-obtain information about law schools, the objective ranking has value. In other words, the question is not whether the *U.S. News* rankings measure the quality of a legal education, but whether *U.S. News*'s ranking process has important information-forcing attributes.[52]

Before *U.S. News*, most schools did not share information about faculty scholarship and hiring, the bar-passage rate and employment status of recent graduates, the number of books in their libraries, or student-faculty ratios.[53] This information was available only to potential students and others in the academic community who sought it out. For

---

schools." STEPHEN P. KLEIN & LAURA HAMILTON, THE VALIDITY OF THE U.S. NEWS AND WORLD REPORT RANKING OF ABA LAW SCHOOLS (1998), http://www.aals.org/validity.html.

51. *See* Brian Leiter, *Measuring the Academic Distinction of Law Faculties*, 29 J. LEGAL STUD. 451, 452 (2000) (listing the flaws in the *U.S. News* rankings).

52. We are not the first to suggest that law school rankings might be useful, even if they fail to measure educational quality. Russell Korobkin has argued that rankings coordinate high-ability students with employers as well as each other. Russell Korobkin, *In Praise of Law School Rankings: Solutions to Coordination and Collective Action Problems*, 77 TEX. L. REV. 403 (1998). To see this, first note that higher-ranked schools tend to be more selective. The argument, then, is that high-ability students choose more selective schools to distinguish themselves from low-ability students. Such signaling works—even when the higher-ranked schools offer no educational benefit—so long as lower-ability students find it harder to get into these higher-ranked schools. *Id.* at 409–10. In effect, rankings separate students according to a criterion that employers care about: natural talent. As a result, the most selective employers recruit at the most selective schools. According to Korobkin, the rankings coordinate employers and students whether they are "based on unimpeachable data or cotton candy." *Id.* at 410. In Korobkin's account, rankings force information from the law student—whether she possesses high or low ability—to the employer. The low-ability student, because she failed to get into the more selective school, has trouble convincing the most selective employers that she is truly a high-ability student. This, however, is not the only information-forcing that the rankings provide.

53. *See* Paul L. Caron & Rafael Gely, *What Law Schools Can Learn from Billy Beane and the Oakland Athletics*, 82 TEX. L. REV. 1483, 1508 (2004) ("By eliminating, or at least substantially limiting, competition among law schools, the AALS eliminated incentives to measure the success of a law school. To the extent that all law schools offered the same courses, taught by faculty with similar credentials, using the same methods, it became more difficult to identify 'winners' and 'losers.'").

obvious reasons, schools that fared poorly on these measures did not publicize the fact; schools that anticipated a poor performance did not bother to collect the data at all. In the case of schools that performed well according to a variety of measures of school quality, we suspect that, prior to the *U.S. News* rankings, there was a social norm in the law school community against public bragging.

However, to say that the *U.S. News* rankings may be supported as a type of revelation tournament does not necessarily justify the rankings. Consider how the *U.S. News* rankings fare according to several criteria we identify as important to the determination of the value and success of a revelation tournament.

1. Information Type

Because of our hypothesized social norm against bragging and the reluctance of poorly performing schools to publicize data, much information about law schools remained hidden before the *U.S. News* rankings broke the norm. As a result of these rankings, otherwise hard-to-obtain information flowed into the market. Although poorly conceived from a methodological standpoint, the rankings provide each school with an excuse to gather information about its law school and publicize it.[54] Schools that do poorly in the *U.S. News* rankings have an incentive to explain publicly why they are in fact better than their objective rankings would suggest.

Importantly, the additional information revealed on law school quality is not the type that may be generated only in high-stress, competitive situations. Rather, in determining quality, consumers of a legal education may care about the ability of law schools to train students to be quality attorneys and place them in good jobs. Direct objective measures exist to measure this quality, including data on the percentage of law students who are still employed one, two, or ten years and so on after graduation.

---

54. The success of *U.S. News* generated an important second-order effect. It created a space for others to improve on the *U.S. News* rankings methodology and produce alternate and arguably better rankings. In other words, the combination of imperfect rankings by a first mover and a high demand for these rankings produces a market for alternate rankings. Competitors seek to improve on the first set of rankings by collecting better information and analyzing it better. So, in the business school context, this competition has produced alternate rankings from magazines and newspapers such as *Fortune*, *Business Week*, the *Wall Street Journal*, and the *Financial Times*. There is a similar vigorous competition in the market for college rankings (even though this predated *U.S. News*).

The point is simple: the social value of an imperfect but successful ranking venture by an outsider such as *U.S. News* is that it produces a competition among different rankers, each of whom now tries to improve on the methodology of the others. In the law school context, we have not seen other periodicals such as the *American Lawyer* or *Legal Affairs* take up the *U.S. News* challenge and produce alternative rankings—and we might ask why not—but we have seen individuals such as Brian Leiter engage in precisely the competitive dynamic that we describe. He has not only unpacked and critiqued the *U.S. News* methodology, but also has attempted to improve on it while producing his own rankings of the law schools. The Leiter rankings, descriptions of methodology, and critique of the *U.S. News*'s ranking methodology are available at Leiter's Law School Rankings, http://www.leiterrankings.com (last visited Nov. 18, 2005). There have also been other attempts to rank law schools such as that by Thomas Brennan. Thomas E. Brennan, Judging the Law Schools, http://www.ilrg.com/rankings/ (last visited Aug. 28, 2005).

Thus, there is nothing particular to the competitive environment engendered within a revelation tournament that is necessary to bring such information to light. A first-stage law school ranking tournament may generate existing information that is based on an objective metric such as employment statistics and that is both verifiable and capable of producing rankings. Designing a one-stage tournament that takes into account these existing factors may provide a superior ranking (at lower cost) than a revelation tournament.

Of course, some less verifiable, more subjective information may emerge from the competition between law schools hoping to place well in the *U.S. News* rankings. For example, the *U.S. News* competition has likely pushed a number of schools to cheat on the numbers that they submit to *U.S. News*.[55] The competition has thus generated information on the willingness of schools to cheat. Nonetheless, consumers of rankings cannot easily observe which schools cheat—that is, the revelation tournament is not particularly effective. Indeed, it is not at all clear that this information about law schools' (or their deans') willingness to cheat is salient to the prospective students and other consumers at issue. In the absence of a specific need to generate subjective, otherwise hard-to-obtain information outside a competitive, high-stress environment, the argument for a revelation tournament is weak.

2. Nature of Decision Makers

In the case of the *U.S. News* ranking of law schools, the ultimate decision makers—law students, law schools, law professors, and so on—may lack the ability to distinguish among the myriad of news releases and information generated by schools attempting to appear better than their peers. And they, especially prospective students, are even less able to detect when schools are cheating to enhance their rankings. In addition, even assuming some ability to evaluate the information, dispersed consumers of the rankings may lack full incentives to evaluate the information that is revealed. In other words, there is a collective action problem. In the law firm setting, as we saw, the partnership may actively encourage a first-stage tournament based on easy-to-measure indices of performance as a means of eliciting information for a more detailed and subjective analysis of potential partnership candidates. The law firm partnership benefits from overturning an objective measurement of quality based on the results of a more subjective, second-stage analysis. Among consumers of the *U.S. News* rankings, there is no such coordination. No single consumer realizes the full benefit to the group of all consumers from assessing any additional information revealed through the tournament.[56]

---

55. Brian Leiter, for example, has written in depth on how schools may game the numbers in the *U.S. News* rankings. *See* Leiter's Law School Rankings, The *U.S. News* Law School Rankings: A Guide for the Perplexed (May 2003), http://www.leiterrankings.com/usnews/guide.shtml.

56. Relying on revelation to generate additional information may further exacerbate the collective action problem. Some schools may put out more employment statistics while others will distribute additional information on grades, thus undermining comparability. Lacking a common standard for comparison, dispersed potential students and others may find it even more difficult to assess the importance of any additional information revealed as a consequence of the *U.S. News* competition.

Intermediaries with an incentive to promote a second-stage information revelation phase of the tournament are also absent in the law school ranking environment. *U.S. News*, for example, does not internalize the full benefits from obtaining an accurate ranking of law schools. *U.S. News* is an external player, an outsider, who seized a gap in the market. The rankings may be highly flawed, but there has been customer demand for them. *U.S. News* (and other potential providers of objective ranking measures) profit increasingly as more consumers focus attention on their rankings even to the exclusion of any potential second-stage revelation of subjective information relevant to rankings. To the extent such subjective measures are hard to quantify and include in the *U.S. News* rankings, *U.S. News* has no incentive to direct the attention of consumers away from its own objective measures and toward such subjective measures. While other intermediaries exist in the market to provide alternative rankings (such as Brian Leiter at the University of Texas Law School), these intermediaries lack the standing and broad reach of *U.S. News*.

In such a case, the information revelation characteristic of the *U.S. News* rankings may do little more than raise the level of noise about the quality of different schools. Rather than focus on revealing additional, more subjective information that might counter misperceptions caused by an inaccurate objective ranking, schools may instead focus on gaming the system to improve their objective standing. For example, to increase their prestige ranking, schools send out glossy flyers and alumni magazines to every law school professor in the country. These mailings detail recent hires, workshop series, endowed lectures, and faculty productivity. More perniciously, to increase the number of applications and hence appear more selective, some law schools supposedly waive the application fee. And to increase employment figures, there are schools who are rumored to hire recent graduates as research assistants. The collective action problem facing consumers of *U.S. News* in deciphering the subjective information learned from such gaming and the lack of intermediaries tabulating such subjective information results in few informational benefits from the gaming. The devotion of resources to these gaming effects, as a result, likely outweighs any informational benefits created by the revelation tournament.

CONCLUSION

This paper makes three claims. First, competition based on objective measures can, under certain conditions, force out information on hard-to-observe subjective characteristics. Specifically, the revelation tournament provides a mechanism for both information revelation and information generation. Looked at in this way, the revelation tournament justifies the presence of otherwise hard-to-explain vague and fuzzy promotion standards.

Second, decision makers who want to advance their own agenda at the expense of the principals might reject the revelation tournament. To bolster the rejection, these decision makers may claim that the objective criteria fail to capture what is really important, but not measured. In light of the information-forcing attributes discussed above, such claims about the limits of objective criteria should be treated with suspicion.

Third, in common with tournaments more generally, revelation tournaments have limitations. The value of a revelation tournament diminishes if (1) decision makers are not sophisticated or lack motivation to use the information the tournament generates, or (2) competition over objective criteria fails to generate meaningful information on the subjective traits of interest.